



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0199; FRL-9953-74-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
District of Columbia; Revision of Regulations for Sulfur Content of Fuel Oil**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the District of Columbia state implementation plan (SIP). The revision pertains to the update of the District of Columbia Municipal Regulations (DCMR) to lower the sulfur content of fuel oil. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2016-0199 at <http://www.regulations.gov>, or via email to pino.maria@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814-2071, or by e-mail at khadr.asrah@epa.gov.

SUPPLEMENTARY INFORMATION: On January 20, 2016, the District of Columbia (the District) through the District of Columbia Department of Energy and Environment submitted a revision to the District’s SIP. The SIP revision consists of revisions to the DCMR for sulfur content of fuel oil which is used for combustion. The revisions to the DCMR reduce the sulfur content of fuel oil that can be combusted within the District and prohibit the combustion of certain higher sulfur content fuel oils.

I. Background

The combustion of fuel oil which contains sulfur leads to emissions of fine particulate matter (PM_{2.5}) and sulfur dioxide (SO₂), which is a precursor to PM_{2.5}. In addition, SO₂ oxidizes to form sulfates, which are one of the largest contributors to the formation of regional haze.

Sulfates cause visibility impairment, also known as regional haze, by the scattering and absorption of sunlight by fine particles. Visibility impairment reduces the clarity, color, and visible distance that one can see. The District asserts these regulations will decrease SO₂ emissions in the District from certain fuel combustion sources and therefore strengthen the District's SIP. The reduction to SO₂ emissions helps the District to maintain the national ambient air quality standards (NAAQS) for SO₂ and PM_{2.5}. Additional SO₂ emission reductions and subsequent reductions in sulfates from District sources combusting lower sulfur fuel will assist the District in achieving further reasonable progress towards reducing regional haze. Under section 169A of the CAA, it is a national goal to remedy and prevent regional haze in any Class I areas.¹ Section 169A requires states which contain Class I areas and states from which emissions may reasonably be anticipated to cause or contribute to visibility impairment in Class I areas to submit SIP revisions to make reasonable progress toward meeting the national goal ("regional haze SIPs"). The District's regional haze program to address visibility impairment requirements in Class I areas was fully approved into the District's SIP by EPA on February 2, 2012. *See* 77 FR 5191.² The District has submitted revised regulations for SIP approval to implement its low sulfur fuel oil program.

II. Summary of SIP Revision and EPA Analysis

The SIP revision consists of revisions to the DCMR Chapters 1, 5, and 8 of Title 20. These

¹ Class I areas are areas of national parks, wilderness areas or other areas of national importance that have visibility protection requirements.

² The District's regional haze SIP addressing the planning period from 2008 to 2018 is consistent with EPA's requirements in 40 CFR 51.308 and 51.309. The SIP addressed contribution to visibility impairment related to emissions of PM_{2.5} and its precursors, and included measures to address emissions that would interfere with reasonable progress goals of neighboring states set to protect Class I areas. During the development of the first round of regional haze SIPs, the regional planning organization for the Northeastern and Mid-Atlantic states, Mid-atlantic/Northeast Visibility Union (MANE-VU), established a strategy for these states to meet the requirements of reasonable progress goals by implementing certain measures, including pursuing a low sulfur fuel oil strategy to reduce sulfur content in fuels by 2018.

revisions to the DCMR reduce the allowable sulfur content of fuel oils that are used in oil-burning combustion units in the District. These revisions require that the sulfur content of number 2 (No. 2) fuel oil be no greater than 500 parts per million (ppm); the sulfur content of No. 4 fuel oil be no greater than 2,500 ppm; and prohibit the use of No. 5 and heavier fuel oils in the District. Additionally, beginning July 1, 2018, the sulfur content of No. 2 fuel can be no greater than 15 ppm. Any fuel oil stored by the ultimate consumer in the District prior to the applicable compliance date may be used after the applicable compliance date. The revisions also include changes to reporting and recordkeeping requirements related to the use and storage of the aforementioned fuel oils. Definitions for terminology which relate to reporting and recordkeeping requirements were added.

The updates to Chapter 1 include amendments to the definitions of American Standards of Testing Materials (ASTM) and distillate oil. The revision to Chapter 5 includes updates to the sampling and testing practices for fuel oils. The amended Chapter 5 regulations require the use of various ASTM methods for the sampling of petroleum; an ASTM standard for the determination of fuel oil grade; and various ASTM methods for the determination of sulfur content in fuel oil. Chapter 8 includes the revised sulfur content for No. 2 and No. 4 fuel oils and prohibits combustion of No. 5 and heavier fuel oils in the District. Chapter 8 also includes the aforementioned compliance provision and definitions related to reporting and recordkeeping requirements.³

By reducing the sulfur in fuel oils, sulfur oxide emissions and PM_{2.5} emissions will be reduced, which will improve visibility while also helping the District to maintain the NAAQS for SO₂ and

³ Chapter 8 also includes provisions allowing waiver of fuel oil limits when EPA has granted fuel waivers. Chapter 8 also addresses fuel oil sulfur limits when a person, owner, or operator of a stationary source employs equipment or a process to reduce sulfur emissions from burning fuel oil.

PM_{2.5}. EPA believes these regulations strengthen the District's SIP. EPA notes that existing provisions and the adoption of a low sulfur fuel oil program in the District will lead to SO₂ emission reductions and provide additional SO₂ and PM_{2.5} emission reductions from the District to achieve further reasonable progress towards reducing regional haze in Class I areas which may be impacted by emissions from the District.

III. Final Action

EPA is approving revisions to the DCMR Chapters 1, 5, and 8 of Title 20 as meeting the requirements of the CAA in section 110 with limits on sulfur content in fuels to be combusted within the District. EPA is approving the amendments to the District's regulations for fuel oil sulfur limits for combustion units. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the DCMR Chapters 1, 5, and 8 of Title 20. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update of the SIP compilation.⁴ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

⁴ 62 FR 27968 (May 22, 1997).

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of

proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action which proposes to approve revisions to the District of Columbia's regulations to lower the sulfur content of fuel oil may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements,
Sulfur oxides.

Dated: September 23, 2016.

Shawn M. Garvin,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart J—District of Columbia

2. In §52.470, the table in paragraph (c) is amended by revising the entries “Section 199”, “Sections 502.1 through 502.15”, “Section 801”, and “Section 899” to read as follows:

§52.470 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20 - Environment				
Chapter 1 General				
* * *	* * *	* * *	* * *	* * *
Section 199	Definitions and Abbreviations	08/16/15	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Added two new definitions.
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Chapter 5 Source Monitoring and Testing				
* * *	* * *	* * *	* * *	* * *
Sections 502.1 through 502.15	Sampling, Tests, and Measurements	08/16/15	[Insert date of publication in the	Updates to sampling and testing practices for fuel oils. Exceptions: Paragraphs 502.11,

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
			Federal Register], [Insert Federal Register citation]	502.12 and 502.14 are not part of the SIP.
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Chapter 8 Asbestos, Sulfur and Nitrogen Oxides				
Section 801	Sulfur Content of Fuel Oils	08/16/15	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Updates to the sulfur content of No. 2 and No.4 fuel oils and the prohibition of the use of No. 5 fuel oil.
* * * * *				
Section 899	Definitions and Abbreviations	08/16/15	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Addition of new definitions that relate to the handling and storage of fuel oil.
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[FR Doc. 2016-24372 Filed: 10/7/2016 8:45 am; Publication Date: 10/11/2016]